United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	**Docket No. 15-0994**
	)	**Issued: July 24, 2015**
DEFENSE HEALTH AGENCY, FORT BELVOIR COMMUNITY HOSPITAL, Bethesda, MD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2015 appellant filed a timely appeal from a March 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a trapezius strain causally related to the October 10, 2014 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence following the March 4, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On October 28, 2014 appellant, then a 44-year-old clinical nurse, filed a traumatic injury claim alleging that on October 10, 2014 she experienced muscle strain with severe spasms in her lower back when she had to care for an intubated patient for approximately three hours. She stated that during her shift she had performed numerous patient care activities requiring bending, turning, lifting, and assisting with procedures. Appellant reported that one week later she still had pain and spasms and was taking pain medication.

In hospital records dated October 14 and 20, 2014, Dr. Daniel E. Jimenez, Board-certified in emergency medicine and occupational medicine, examined appellant for a possible work injury to her lower back that occurred on October 10, 2014. He stated that she worked as a nurse and was attending to a critically ill patient when she suddenly felt pain in the right lower back. Dr. Jimenez reported that appellant was seen in the emergency room and given pain medication. Upon examination of the lumbar spine, he observed severe spasms on the right suprascapular muscles suggestive of trigger points. Dr. Jimenez reported that an x-ray of the cervical spine revealed mild degenerative changes C3-4 and C6-7 and an x-ray of the lumbar spine demonstrated grade 2 spondylolisthesis L5-S1. He diagnosed trapezius strain and authorized appellant to return to work with restrictions of no lifting more than five pounds.

Appellant submitted various physical therapy progress reports dated November 6, 2014 to January 7, 2015.

By letter dated January 27, 2015, OWCP advised appellant that her claim was initially accepted as a minor injury, but was being reopened for consideration because the medical bills had exceeded $1,500.00. It informed her that the evidence submitted was insufficient to establish her traumatic injury claim and requested additional medical evidence to demonstrate that she sustained a diagnosed condition causally related to the October 10, 2014 employment incident.

On February 28, 2015 appellant requested a 30-day extension on her case in order to get all the information needed properly submitted. She explained that she received the notification much later than the printed date because mail delivery was not available on some days due to weather conditions and closures of the Fort Belvoir nonessential clinics.

In a decision dated March 4, 2015, OWCP denied appellant's claim. It accepted that the October 10, 2014 incident occurred as alleged, but denied her claim finding insufficient medical evidence to demonstrate that she sustained a diagnosed condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

[3] 5 U.S.C. §§ 8101-8193.

evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.[6] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.[9]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[11] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[12]

ANALYSIS

Appellant has alleged that on October 10, 2014 she sustained a lower back condition as a result of caring for a critically intubated patient during one shift. OWCP accepted that the October 10, 2014 incident occurred as alleged but denied the claim finding insufficient medical evidence to establish that she sustained a diagnosed condition causally related to the accepted incident. The Board finds that appellant did not meet her burden of proof to establish her traumatic injury claim.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[11] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[12] *James Mack*, 43 ECAB 321 (1991).

Appellant was examined in the hospital by Dr. Jimenez who provided hospital records dated October 14 and 20, 2014. Dr. Jimenez examined her for a possible work injury to her lower back that occurred on October 10, 2014 while attending to a critically ill patient. Upon examination of appellant's lumbar spine, he observed severe spasms on the right suprascapular muscles suggestive of trigger points. Dr. Jimenez also reported that an x-ray of the cervical spine revealed mild degenerative changes and diagnosed trapezius strain. The Board notes that he provided examination findings, a medical diagnosis, and a description of the October 10, 2014 incident.

Dr. Jimenez did not, however, provide any opinion on the cause of appellant's trapezius strain or conclude that she sustained the strain as a result of the October 10, 2014 work incident. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] Dr. Jimenez' reports, therefore, are insufficient to establish appellant's claim.

Appellant also submitted various physical therapy progress reports dated November 6, 2014 to January 7, 2015. These physical therapy reports are of no probative value to establish her claim as physical therapists are not physicians as defined under FECA.[14]

The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.[15] Because appellant has not provided such probative medical evidence in this case, the Board finds that she did not meet her burden of proof to establish her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a trapezius strain causally related to the October 10, 2014 employment incident.

[13] *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

[14] Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

[15] *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar, supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board